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DEPARTMENT OF COMMERCE

International Trade Administration

[A-557-815]

Welded Stainless Pressure Pipe from Malaysia: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (“Department”) preliminarily determines that welded stainless pressure pipe (“WSPP”) from Malaysia is being, or is likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 733 of the Tariff Act of 1930, as amended (“the Act”). The estimated weighted-average dumping is shown in the “Preliminary Determination” section of this notice. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: (Insert date of publication in the *Federal Register*.)

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Erin Kearney, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0650 or (202) 482-0167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 2013, the Department received an antidumping duty (“AD”) petition concerning imports of WSPP from Malaysia filed in proper form by Bristol Metals, LLC, Felker

Brothers Corp., and Outokumpu Stainless Pipe, Inc. (“Petitioners”).¹ The Department initiated an AD investigation of WSPP from Malaysia on June 12, 2013.² On July 26, 2013, the U.S. International Trade Commission (“ITC”) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of WSPP from Malaysia.³

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage and product characteristics but no interested party submitted comments. We also stated our intention to select respondents based on United States Customs and Border Protection (“CBP”) data. After releasing CBP data to interested parties on June 18, 2013, the Department received comments regarding the CBP data and respondent selection from Petitioners on June 21, 2013.⁴

On July 19, 2013, based on its analysis of the CBP data, the Department selected Kanzen Tetsu Sdn. Bhd. (“Kanzen”) and Pantech Stainless & Alloy Industries Sdn. Bhd. (“Pantech”) as mandatory respondents.⁵ On July 23, 2013, the Department issued the AD questionnaire to Kanzen and Pantech. On August 27, 2013, after requesting and receiving extensions to its questionnaire deadlines, Pantech informed the Department that it would not be participating in the investigation of WSPP from Malaysia.⁶ Kanzen also requested and received extensions of its questionnaire response deadlines, but Kanzen submitted no questionnaire responses.

¹ See Antidumping Duty Petitions on Welded Stainless Pressure Pipe from Malaysia, Thailand, and Vietnam, dated May 16, 2013 (“Petition”).

² See *Welded Stainless Pressure Pipe From Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 78 FR 35253 (June 12, 2013) (“*Initiation Notice*”).

³ See *Welded Stainless Steel Pressure Pipe From Malaysia, Thailand, and Vietnam*, 78 FR 45271 (July 26, 2013).

⁴ See Letter from Petitioners, “Welded Stainless Steel Pressure Pipe From Malaysia: Comments on CBP Data Release,” dated June 21, 2013.

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Office 4, “Antidumping Duty Investigation of Welded Stainless Pressure Pipe from Malaysia: Respondent Selection Memorandum,” dated July 19, 2013.

⁶ See Letter from Pantech, “Welded Stainless Steel Pipe from Malaysia,” dated August 27, 2013.

On August 5, 2013, Superinox Pipe Industry Sdn. Bhd. filed a submission with the Department stating that it wanted to participate in the investigation as a voluntary respondent. Between August 27 and September 9, 2013, Superinox Pipe Industry Sdn. Bhd. and its affiliates, Superinox International Sdn. Bhd., and Tatt Giap Hardware Sdn. Bhd. (collectively, “Superinox”), submitted responses to sections A, B, and C of the Department’s questionnaire, which were filed by the deadlines originally given to Kanzen and Pantech before they decided not to participate in the investigation. Based on an analysis of the CBP data used to select the original mandatory respondents, the Department found that the next largest producer or exporter was Superinox International Sdn. Bhd. On September 25, 2013, the Department selected Superinox International Sdn. Bhd. as the third mandatory respondent.⁷

On October 25, 2013, Petitioners requested that the Department make a finding that critical circumstances exist with respect to U.S. imports of WSPP from Malaysia and order suspension of liquidation 90 days prior to the date of its preliminary determination.

On November 18, 2013, Superinox requested a postponement of the final determination and an extension of provisional measures.⁸ On November 21, 2013, Petitioners requested a postponement of the final determination.⁹ On December 27, 2013, Superinox withdrew from participating in the investigation and no longer consented to the use of its business proprietary and public information in this investigation.¹⁰

⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Office 4, “Antidumping Duty Investigation of Welded Stainless Pressure Pipe from Malaysia: Selection of Additional Mandatory Respondent,” dated September 25, 2013.

⁸ See Submission from Superinox, “Welded Stainless Steel Pipe from Malaysia; Request to Extend the Final Determination” dated November 18, 2013.

⁹ See Submission from Petitioners, “Welded Stainless Steel Pressure Pipe from Malaysia: Contingent Request for Postponement of Final Determination” dated November 21, 2013.

¹⁰ See Submission from Superinox, “Welded Stainless Steel Pipe from Malaysia; Withdrawal from Participation” dated December 27, 2013.

Period of Investigation

The period of investigation (“POI”) is April 1, 2012, through March 31, 2013. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was May 2013.¹¹

Postponement of Preliminary Determination

On September 19, 2013, Petitioners made a timely request, which they amended on September 24, 2013, for a 50-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).¹²

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.¹³ Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department’s practice, the deadline will become the next business day. Accordingly, the revised deadline for the preliminary determination of this investigation is now December 30, 2013.¹⁴

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on November 18 and November 21, 2013, Superinox and Petitioners, respectively, requested that the Department postpone the final determination by 60 days (135 days after publication of the preliminary determination), and

¹¹ See 19 CFR 351.204(b)(1).

¹² See *Welded Stainless Pressure Pipe From Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 78 FR 62583 (October 22, 2013). The Department notified interested parties of the postponement of the preliminary determination more than twenty days before the original deadline for issuing the preliminary determination.

¹³ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government,” dated October 18, 2013.

¹⁴ The deadline of December 28, 2013, falls on a Saturday; therefore, the deadline is the next business day, *i.e.* Monday, December 30, 2013.

Superinox requested that the Department extend the provisional measures.¹⁵ Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

In accordance with sections 735(a)(2) and 733(d) of the Act and 19 CFR 351.210(b) and (e), because: (1) our preliminary determination is affirmative; (2) the exporter requesting the postponement, Superinox, accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial of the postponement exist, we are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. We are also extending the application of the provisional measures prescribed under section 733(d) of the from a four-month period to not more than a six-month period.

Scope of the Investigation

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. For purposes of this investigation, references to size are in nominal inches and include all products within tolerances allowed by

¹⁵ See Submission from Superinox, "Welded Stainless Steel Pipe from Malaysia; Request to Extend the Final Determination," dated November 18, 2013; see also Submission from Petitioners, "Welded Stainless Steel Pressure Pipe from Malaysia: Contingent Request for Postponement of Final Determination," dated November 21, 2013.

pipe specifications. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) Welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations,¹⁶ in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. No interested party submitted comments.

¹⁶ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

Adverse Facts Available

Because the mandatory respondents Kanzen, Pantech, and Superinox either failed to respond to the Department's questionnaire or informed the Department that they would no longer participate in the investigation, we have preliminarily determined to apply facts otherwise available with an adverse inference to these respondents pursuant to sections 776(a) and (b) of the Act.¹⁷ Although it requested that its information be removed from the record, we have retained Superinox's business proprietary and public information on the record of this investigation in order to prevent the manipulation of the final weighted-average dumping margins for the mandatory respondents, which are the largest three exporters of the merchandise under consideration. We have based the adverse facts available ("AFA") rate for the three mandatory respondents on this information.¹⁸ As AFA, we assigned the three mandatory respondents a rate of 167.11 percent.

Critical Circumstances

On October 25, 2013, Petitioners requested that the Department make a finding that critical circumstances exist with respect to U.S. imports of WSPP from Malaysia. Petitioners alleged that U.S. importers of WSPP from Malaysia should have known that exporters were selling subject merchandise in the United States at less than fair value and there was likely to be material injury by reason of such sales because the weighted-average dumping margins that will be assigned as AFA in this investigation will likely exceed 25 percent, the level required to impute knowledge of dumping, and the ITC preliminarily found that an industry in the United

¹⁷ See memorandum from Abdelali Elouaradia, Director, Office IV Antidumping and Countervailing Duty Operations to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations regarding "Welded Stainless Pressure Pipe from Malaysia: Application of Facts Available and Selection of Adverse Facts Available Rate" dated concurrently with this notice.

¹⁸ See memorandum from Abdelali Elouaradia, Director, Office IV Antidumping and Countervailing Duty Operations to Christian Marsh Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations regarding "Welded Stainless Pressure Pipe from Malaysia: Retention of Superinox's Data" dated concurrently with this notice.

States is materially injured by such imports. Moreover, Petitioners allege that there have been massive imports of the subject merchandise into the United States over a relatively short period, which is the second criterion for finding critical circumstances, because there was an 87.6 percent increase in the volume of imports in the three months following the filing of the Petition compared to the volume of imports during the three months immediately preceding the filing of the Petition.

Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of subject merchandise over a relatively short period.

The Department normally considers weighted-average dumping margins of 25 percent or more, for export price sales, or 15 percent or more, for constructed export price sales, sufficient to impute knowledge of the exporter selling the subject merchandise at less than its fair value.¹⁹ We have assigned Kanzen, Pantech, and Superinox a preliminary weighted-average dumping margin based on total AFA equal to 167.11 percent, which provides a sufficient basis for imputing knowledge of sales of subject merchandise at less than fair value to the importers.

¹⁹ See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from Indonesia*, 71 FR 15162, 15166 (March 27, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia*, 71 FR 47171 (August 16, 2006).

In determining whether the importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC.²⁰ If the ITC finds a reasonable indication of material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. Here the ITC preliminarily found that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of WSPP from Malaysia.²¹ Therefore, the ITC's preliminary injury determination in this investigation is sufficient to impute knowledge that material injury is likely.

Furthermore, because the mandatory respondents are not participating in this investigation, consistent with Department practice, we have also based our "massive imports" determination on AFA.²² Specifically, we have made an adverse inference that imports from these three respondents were massive during the relevant time period.

However, we have preliminarily found that critical circumstances do not exist with respect to all other exporters or producers of WSPP from Malaysia because we do not find the criterion of section 733(e)(1)(A) of the Act satisfied with respect to all other exporters or producers. Due to the absence of cooperative mandatory respondents, we have calculated the weighted-average dumping margin for "all-other" exporters or producers by averaging the

²⁰ See *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2053 (January 14, 2009) ("*Graphite Electrodes*") ("We also continue to find the ITC's preliminary injury determination in the instant investigation is sufficient to impute knowledge of material injury to importers.").

²¹ See *Welded Stainless Steel Pressure Pipe From Malaysia, Thailand, and Vietnam*, 78 FR 45271 (July 26, 2013).

²² See, e.g., *Graphite Electrodes* 74 FR 2049, 2052-2053 and accompanying Issues and Decision Memorandum at Comment 4 (stating that "we have based our determination of whether there were massive imports with respect to the Fangda Group on AFA...the Department may employ adverse inferences in selecting from among the facts available 'to ensure that the party does not obtain a more favorable result by failing to cooperate fully...' To ensure that the Fangda Group does not obtain a more favorable result by failing to cooperate, for this final determination, we continue to find, as AFA, that imports of subject merchandise were massive for the Fangda Group.").

dumping margins alleged in the Petition, as adjusted at initiation. The average of the Petition’s dumping margins is 22.70 percent. Since the preliminary “all-others” rate is not greater than 25 percent, we preliminarily find that this weighted-average dumping margin does not provide a sufficient basis for imputing knowledge of sales of subject merchandise at less than fair value to importers with respect to exporters or producers in the all-others group.²³

Preliminary Determination

The preliminarily weighted-average dumping margins are as follows:

Exporter or Producer	Weighted-Average Dumping Margin
Superinox Pipe Industry Sdn. Bhd./Superinox International Sdn. Bhd.	167.11%
Kanzen Tetsu Sdn Bhd	167.11%
Pantech Stainless & Alloy Industries Sdn Bhd	167.11%
All Others	22.70%

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated “all others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters or producers individually investigated, excluding rates that are zero, *de minimis* or determined entirely under section 776 of the Act. The weighted-average dumping margin assigned to the three mandatory respondents was determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de*

²³ See memorandum from Erin Kearney International Trade Analyst, Office IV AD/CVD Operations to Abdelali Elouaradia, Director, Office IV AD/CVD Operations regarding “Welded Stainless Pressure Pipe from Malaysia: Critical Circumstances” dated concurrently with this notice.

minimis or determined based entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters. Consistent with our practice, we calculated an all-others rate equal to a simple average of the petition rates,²⁴ as listed in the *Federal Register* notice announcing the initiation of this investigation.²⁵

Disclosure and Public Comment

We will disclose the calculations used to determine the AFA rate to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 21 days after the date of publication of this notice in the *Federal Register*, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.²⁶ A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department.²⁷ This summary should be limited to five pages total, including footnotes. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request for a hearing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice.²⁸ Hearing requests should contain the party's name, address, and telephone number, the number of participants in the hearing, and a list of the issues to be discussed. If a request for a hearing is

²⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets From Taiwan*, 73 FR 39673, 39674 (July 10, 2008).

²⁵ See *Initiation Notice*.

²⁶ See 19 CFR 351.309.

²⁷ See 19 CFR 351.309(c)(2).

²⁸ See 19 CFR 351.310(c).

made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm the date, time, and location of the hearing two days before the scheduled date. With limited exceptions, all documents submitted to the Department must be filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time on the date it is due.

Suspension of Liquidation

As noted above, the Department found that critical circumstances exist with respect to imports of the merchandise under consideration from SI/SPI, Kanzen, and Pantech. Therefore, in accordance with section 733(e)(2) of the Act, we will direct CBP to suspend liquidation of all entries of WSPP from Malaysia from SI/SPI, Kanzen, and Pantech that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the *Federal Register* and require a cash deposit for such entries as noted below. Since we did not find that critical circumstances exist with respect to exporters or producers in the all-others group, we will instruct CBP to suspend liquidation of all other entries of WSPP from Malaysia entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*.

Pursuant to section 733(d) of the Act and 19 CFR 351.205(d), we will instruct CBP to require cash deposits²⁹ equal to the weighted-average dumping margins indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

²⁹ See *Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

International Trade Commission (“ITC”) Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of WSPP from Malaysia before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: December 30, 2013.

Christian Marsh,
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations.

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